IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.99 OF 2005
IN
SUIT NO.1694 OF 2001

Mohanlal Ghanshamdas Kukreja..Plaintiff

Vs.

Bakirali Mulla Fazalali Bhanupurwala..Defendant

Mr. P. Gangwani i/b. A.V. Jain & Associate for the Applicant/plaintiff.
Mr. J.B. Patel, for Defendant.

CORAM: A.M. KHANWILKAR, J.
DATE : 8th August, 2005
P.C.:

1. Heard Counsel for the parties. Perused the pleadings.

At the outset, I may point out that the Counsel for the defendant fairly submits that the defendant will have no objection for granting the amendment in terms of Schedule paragraphs 1 to 15, 18 to 37 and 39 only. In other words, Chamber Summons is opposed only with regard to proposed amendment in terms of paragraphs 19, 20, 38, 40 and 41 of the Schedule appended to the Chamber Summons. In the latter paragraphs the plaintiff seeks to place on record events which have unfolded since 1990 between the parties. In so far the documents which are sought to be relied to support the proposed amendment, it is not the case of the defendant that those documents are nonexistent documents. According to the defendant, however, all these documents were available with the plaintiff since 1990 and much before the present suit came to be instituted. Besides, the plaintiff had instituted another suit No.4315 of 1998 in respect of Commercial Chamber. It is the case of the defendant that for the first time the plaintiff intends to introduce the case of exchange of shares as is sought to be made out in the proposed amendment. According to the defendant, therefore, that will change the

frame of the suit. Besides, contends, Counsel for the Defendant that substantive relief is claimed by way of proposed amendment in the form of damages against the defendant for dismissal of the suit being Suit No.5357 of 1990 and Suit No.2623 of 1993 on the allegation that the same have been dismissed due to the negligence of the defendant, which has caused prejudice to the plaintiff. According to the defendant, therefore, the Chamber Summons ought to be dismissed in so far as the proposed amendment in paragraphs 19, 20, 38, 40 and 41 respectively.

2. After going through the pleadings and considering the rival submissions, in my opinion, the amendment sought to be introduced by way of paragraphs 19, 20, 38, 40 and 41 if granted will not cause any prejudice to the defendant. On the contrary the same would further the cause of justice in resolving all issues between the parties. If the proposed amendment is granted that will not change either the frame of the suit or the cause of action. Besides, the argument of defendant that it is open to the plaintiff to take recourse to another suit for the reliefs claimed in the proposed amendment, in my opinion, needs to be rejected. This is so, because the subject matter of the suit remains the same even if the proposed amendment is to be granted. In my opinion, there is no change in the cause of action, whereas the proposed amendment is consequential amendment introduced by the plaintiff for full, complete and effectual adjudication of all issues inter se. In the interest of justice, therefore, even the proposed amendment sought in terms of paragraphs 19, 20, 38, 40 and 41 will have to be allowed to avoid

multiplicity of proceedings between the parties for the same subject matter. It would have been another matter if the defendant was to contend that the reliefs claimed by way of proposed amendment is barred by limitation. Even if such contention is raised, that will have to be considered on its own merits at the stage of trial.

3. Taking an over all view of the matter, I have no hesitation in making the Chamber Summons absolute in terms of prayer clause (a) with no order as to costs. Amendment to be carried out within four weeks from today.

4. Needless to observe that it will be open to the defendant to file further written statement in view of the amended plaint to be served on the defendant.

(A.M. KHANWILKAR, J.)